IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 76 of 1999()

CRA.6/1997 of ADDL.SESSIONS COURT, PARAVUR
CC.370/1994 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR

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REVN. PETITIONER: APPELLANT/ACCUSED

THOMAS, S/O.ANTONY
PLACKAL HOUSE, PALLIPPURAM
MALA, THRISSUR.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. GRACY, W/O.FRANCIS
   SECRETARY, CHATHEDON SERVICE
   CO-OPERATIVE BANK LTD., NO.195
   CHATHEDOM KARA, CHENDAMANGALAM VILLAGE
   PARAVOOR TALUK.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.V.BABY
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.76/99

ORDER ON CRL.M.P.NO.294/99 IN CRL.R.P.NO.76/1999

DISMISSED

18.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.76 of 1999

Dated this the 18th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months.

2. It is the case of the complainant that the accused issued Ext. P1 and P2 series of 3 cheques towards discharge of liability to the complainant society for having purchased coconuts and that when the cheques were presented the same got bounced for want of funds in the account of the accused. The lawyer notice was returned unclaimed.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 and 2 and Exts. P1 to P10. PW1, the secretary of the society and PW2, the Bank Manager has proved the documents produced. Exts. P8 and P9 are the extracts of the account of the accused in the banks. PW1 has testified that the notice was sent in the correct address and the same was returned unclaimed. The contention of the revision petitioner is that as notice has not been served the statutory stipulation with

respect to the sending of notice demanding payment has not been complied with. It is also contented that revision petitioner/ accused had sent a lawyer notice demanding return of the cheques. According to him, he had paid the amount and the practice as admitted by PW1 is that cheque used to be issued for the amounts due and when payment is made the cheques used to be returned. According to the accused it was the blank cheque that was issued is denied by PW1. PW1 has deposed with respect to the execution of the cheque. The lawyer notice allegedly sent by the accused demanding the return of notice has not been produced. Of course, PW1 has admitted the receipt of the same when the above was put to her in the cross examination. It is pointed out by the counsel for the respondent/complainant that the above lawyer notice was issued subsequent to the institution of the complainant. No defence evidence has been adduced to rebut the statutory presumptions. The answers of PW1 in the cross examination is not sufficient to rebut the statutory presumptions. In the circumstances, I find no reasons to interfere in the findings of the court below. The conviction is confirmed.

4. Considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.79,500/- and in default, to undergo simple imprisonment for three months. Revision petitioner is granted two months' time to pay the amount of compensation, less the amount deposited if any. The amount in deposit can be withdrawn by the complainant. The revision petitioner shall appear before the Judicial First Class Magistrate Court, Paravoor on 4.9.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl